IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2023

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.13935 of 2021 and
W.M.P. No.14805 of 2022

M/s.Vaya Life (P) Ltd.,
Represented by its Director Mrs.Radhika Vasanthakumar,
Aged 65 years,
No.129, Harrington Road,
Chennai - 600 030. .. Petitioner

Vs.

1. The Superintendent,
   Circle-III, Group-IV,
   Ministry of Finance / Department of Revenue,
   GST and Central Excise Audit -I Commissionerate,
   No.1775, Inner Ring Road,
   Anna Nagar West Extension,
   Chennai 600 101.

2. The Superintendent of GST & Central Excise,
   Range - I, Purasawalkam Division,
   Chennai North Commissionerate,
   Newry Towers, No.2054, Ist Block,
   IInd Avenue, 12th Main Road, Anna Nagar,
   Chennai - 600 040. ..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the Ist Respondent viz., File No.C.No.V/15/GST/30/2021-Audit I-C3G4, culminating in the issue of the Show Cause Notice No.78 of 2021 dated 01.04.2021 from File No.C.No.V/15/GST/30/2021-Audit I-C3G4 and quash the same.

For Petitioner : Ms.J.Ragini
for S.Murugappan

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

ORDER

The writ petition is filed challenging the show cause notice No.78 of 2021 dated 01.04.2021.

2. The petitioner company is engaged in importing and trading of various kitchen and household articles, scouring or polishing pads, gloves etc., and had availed Input Tax Credit under Integrated Goods and Services Act, 2017 (hereinafter referred to as "IGST Act"), Central Goods and Services Act, 2017 (hereinafter referred to as "CGST Act") and Tamil Nadu State Goods and Services Tax Act, 2017 (hereinafter referred to as "TNSGST Act"). There was an audit conducted by the 1st respondent of the records of the petitioner company for the period July 2017 to March 2019. Based on such audit, it was alleged that the Input Tax Credit availed by the petitioner company as per their returns, is not matching with the eligible Input Tax Credit as reflected in GSTR-2A statements and is in excess in respect of CGST, IGST as well as SGST Credits.

3. It was stated that as per the details of the outward supplies furnished

by the suppliers, excess credit has been taken by the petitioner company, and such credit were not reversed by the petitioner company though there was mismatch. The petitioner company submitted a letter dated 27.01.2021 in this connection to the 1st respondent and stated that the suppliers have accounted the purchasers under B2C instead of B2B resulting in mismatch, that the petitioner company has paid the cost including the tax element and the tax element has been already paid by their suppliers to the Government Authority.

4. Not convinced with the above response the impugned Show Cause Notice No. 78/ 2021 dated 01.04.2021 came to be issued proposing to recover ineligible credit in terms of Section 73(1) of CGST Act together with interest. The above show cause notice is the subject matter of challenge in the present writ petition *inter alia* on the following grounds:

a. That the petitioner company has made payment to the suppliers including the tax components in all cases and based on such payments and tax invoices raised by the suppliers, the petitioner company has rightly taken the Input Tax Credit of the amounts paid. That there is no basis to contend that such credits are ineligible credits merely for the reason that the returns filed by the suppliers do not reflect these payments correctly.

b. It was submitted by placing reliance on the judgment of this Court in the case of *Sri Ranganathar Valves Pvt. Ltd., v. Asstti. Commr. (CT), Coimbatore* reported in *2020 (42) G.S.T.L. 326 (Mad.,)* that the rights of the recipients to take credit have been upheld, when payments including tax have been made to the suppliers of the goods.

5. At the outset, a preliminary objection was raised by Mr.A.P.Srinivas, the learned counsel for the respondent that the writ petition is premature and ought not to be entertained at the stage of show cause notice.

6. I find that there is merit in the submission of the learned counsel for the respondent that it is trite law that the jurisdiction under Article 226 of the Constitution of India ought not to be exercised in a routine fashion at the stage of show cause notice. Though it is submitted that the issues raised are governed by orders of this Court, however, it would require investigation of facts an exercise which is alien to the jurisdiction under Article 226 of the Constitution of India. Courts have frowned on Writ Petition filed against show cause notices. The liability to pay taxes requires determination of disputed questions of fact and should be agitated before Department authorities. (*Kindy see Union of India v Bajaj Tempo Ltd, (1998) 2 SCC 281)*

7. In view thereof, I am not inclined to entertain this Writ Petition against the show cause notice. However, it is open to the petitioner to file their objections within a period of 4 weeks from the date of receipt of a copy of this order. It is always open to the petitioner to rely upon provisions or judgments which may have a bearing. If any such objection is filed, the same shall be considered and orders shall be passed after affording the petitioner an opportunity in accordance with law. The writ petition stands disposed of accordingly. No Costs. Consequently, connected miscellaneous petition is closed.

22.11.2023

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
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MOHAMMED SHAFFIQ, J.

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To:
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   Circle-III, Group-IV,
   Ministry of Finance / Department of Revenue,
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